IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K. HEMA

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl. Rev. Pet. No. 869 of 2004(C)

CMP. 4247/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, ATTINGAL
.....

REVN. PETITIONER/COMPLAINANT

R. APPUKUTTAN NAIR, S/O. RAMAN PILLAI,
BHAVAN SADHANAM, POINKUZHIKONAM, ANAKUDY,
VAMANAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI. N.R. SURESH KUMAR
SRI. J. JAYAKUMAR

RESPONDENTS/COUNTER PETITIONER

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C. K. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.R.P. No.869 of 2004

Dated this 10th day of January, 2007.

ORDER

This revision is filed challenging the order passed under section 203 of the Code of Criminal Procedure, dismissing the complaint filed by the revision petitioner. Revision petitioner filed a complaint on the allegation that the accused's father availed of a loan of Rs.50,000/- from the complainant on 10.3.2003 and issued a receipt agreeing to repay the same within two months. Thereafter, the accused issued a cheque for Rs.10,000/- in partial discharge of his father's liability. The cheque was drawn on an account maintained by him with the banker which, on presentation, was returned unpaid due to insufficient of fund. A notice was issued by registered post to the accused demanding payment. The notice was returned with endorsement "addressee left India". Thereafter, no payment was made and hence on the allegation that the accused committed offence under section 138 of the Negotiable Instruments Act, a complaint was filed.

2. An affidavit was filed by the complainant in lieu of the sworn statement. Documents were also produced. The court, however, found

that there is no service of notice. Presumption of service of notice under section 138(b) of the Negotiable Instruments Act also cannot be drawn. Hence, the trial court held that the complaint is not maintainable and there is no sufficient ground to proceed with the complaint. According to lower court, presumption of service of notice can be drawn under section 27 of the General Clauses Act only if it is found that the notice was issued in the correct address of the addressee. It was also held that complainant is not having a case that the accused, without giving proper instruction to the postal authorities, left India with an intention to evade service of notice. On these presumption it was held that there was no service/presumption of service of notice.

3. The question whether the address in which the notice was sent under section 138(b) of the Negotiable Instruments Act is the correct address or not, is a matter of evidence. The complainant has averred in the complaint and also in the sworn statement that notice was given in the address of the accused. Whether he had evaded the notice deliberately or not can be decided only after adducing evidence. In the above circumstances, I find that the ground stated to dismiss the complaint is unsustainable. The impugned order is therefore set aside.

The trial court is directed to take the case on file, re-consider the matter and dispose of the same in accordance with law. The complainant-revision petitioner shall appear before the trial court on 15.2.2007.

The revision petition is allowed.

K. HEMA, JUDGE.

Krs.